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SEP 21
CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1934. No. 395

WILLIAM D. GORDON, Secretary of Banking of Pennsylvania, Statutory Receiver of CHRISTIAN A. FISHER BUILDING AND LOAN ASSOCIATION,
Petitioner,

v.

JOSEPH OMINSKY and ROBERT B. ELY, 3rd, Federal Receivers of CHRISTIAN A. FISHER BUILDING AND LOAN ASSOCIATION, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, AND BRIEF IN SUPPORT THEREOF

WM. A. SCHNADER,
Attorney General.
HAROLD D. SAYLOR,
Deputy Attorney General.
LEO WEINROTT,
Special Deputy Attorney General.
Counsel for Petitioner.

State Capitol,
Harrisburg, Pa.

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IN THE

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OCTOBER TERM, 1934. No.

WILLIAM D. GORDON, Secretary of Banking of Pennsylvania, Statutory Receiver of CHRISTIAN A. FISHER BUILDING AND LOAN ASSOCIATION,
Petitioner,

v.

JOSEPH OMINSKY and ROBERT B. ELY, 3rd, Federal Receivers of CHRISTIAN A. FISHER BUILDING AND LOAN ASSOCIATION, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE, THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of William D. Gordon, Secretary of Banking of Pennsylvania, statutory receiver of Christian A. Fisher Building and Loan Association, respectfully represents:

A. SUMMARY STATEMENT OF THE MATTER INVOLVED.

(a) The Decrees Below.

Your petitioner is the Secretary of Banking of the Commonwealth of Pennsylvania and statutory receiver of Christian A. Fisher Building and Loan Association, a corporation of that Commonwealth.

The decree which your petitioner seeks to have this Court review is the final decree of the United States Circuit Court of Appeals for the Third Circuit, entered July 25, 1934, affirming the decree of the United States District Court for the Eastern District of Pennsylvania, entered August 2, 1933, in a suit numbered and entitled on the docket of the District Court, "No. 7619, March Term 1933, HARVEY STEIGNER and IDA V. STEIGNER, His Wife, EDITH B. GOODE, JULES SKLAR, PHILIP ZINMAN, *v.* CHRISTIAN A. FISHER BUILDING AND LOAN ASSOCIATION." The suit was in equity and sought the appointment of receivers to take possession of and liquidate a Pennsylvania building and loan association.

By its decree the District Court appointed Joseph Ominsky and Robert B. Ely, 3rd, as receivers to take possession of and liquidate Christian A. Fisher Building and Loan Association and restrained all others from taking possession of or intermeddling with any of the property of the association without leave of the District Court.

The Commonwealth believes that the decree of the District Court, and of the Circuit Court of Appeals affirming it, were erroneous in that they denied to the Commonwealth of Pennsylvania its right to supervise, regulate and liquidate quasi-public corporations, such as banks and building and loan associations, exclusively through its administrative officers.

(b) The Questions Presented.

The questions presented to the Circuit Court of Appeals for the Third Circuit on the appeal of the Secretary of Banking from the decree of the District Court and the questions for review before this Court are:

1. Has a Federal court equity jurisdiction over a quasi-public corporation of a state, such as a bank or a building and loan association, where the bill of complaint is filed by stockholders, who, under the laws of the state creating the corporation, cannot have a controversy with the corporation as to its liquidation?

2. Are state banks and building and loan associations, as quasi-public corporations, subject to the equity jurisdiction of a Federal court, and may a Federal court appoint receivers for such corporations when the law of the state under which they are organized provides a complete system for their regulation, supervision and liquidation by an administrative department of the state?

3. If a Federal court has equity jurisdiction to liquidate such corporations, was its exercise of such jurisdiction and the appointment of receivers

in this case an abuse of discretion on the part of the court?

4. Where the administrative department of a state charged with the regulation, supervision and liquidation of its building and loan associations is actually liquidating the affairs of an association, has a Federal court the right to appoint receivers and to interfere with such liquidation?

(c) The Statutes Involved.

Challenge of the jurisdiction of the Federal court in this case involves Section 24 of the Judicial Code, as amended (R. S., Secs. 563, 629; 28 USCA Sec. 41 (1)). The right of the Commonwealth of Pennsylvania to administer exclusively through its courts and administrative officers the affairs of banks and building and loan associations was given by the Pennsylvania Act of Assembly of June 15, 1923, P. L. 809, as amended by the Act of May 5, 1927, P. L. 762 (7 PS Secs. 4, 21, 22, 29), and the Department of Banking Code of May 15, 1933, P. L. 565 (71 PS Secs. 733-1, etc.).

Pertinent sections of the Act of 1923 are set forth in Appendix "B" attached to the petition for writ of certiorari and brief filed with this Court simultaneously with this petition in the case of COMMONWEALTH OF PENNSYLVANIA *v.* JOHN G. WILLIAMS, et al., RECEIVERS OF MORTGAGE BUILDING AND LOAN ASSOCIATION.

(d) Statement of the Facts.

1. On ~~May~~ March 31, 1933, stockholders of a Pennsylvania building and loan association who reside in New Jersey, filed a bill in equity in the District Court of the United States for the Eastern District of Pennsylvania asking for the appointment of receivers to take possession of the association and liquidate its affairs (R. 4, 12).

2. Immediately Judge Welsh, of the District Court, entered an order fixing April 21, ~~1931~~ 1933, as the time for a hearing on the motion for the appointment of a receiver and directed service of the bill of complaint and the order on the defendant association on or before April 5, 1933 (R. 14).

3. On April 8, 1933, at a formal hearing before the Attorney General, held pursuant to law, the defendant association was found to be insolvent and in an unsafe and unsound condition. Thereupon, with the approval of the Attorney General, the Secretary of Banking filed a certificate in his office at Harrisburg taking possession of the business and property of the association, and forthwith filed a certified copy thereof in Court of Common Pleas No. 4 of Philadelphia County, as of March Term, 1933, No. 4445 (R. 16, 21), in accordance with the provisions of the Pennsylvania statutes above referred to.

4. By this procedure the Secretary of Banking took formal legal possession of the association and immediately thereafter took actual possession of its assets

and appointed Robert B. Ely, 3rd, as his deputy to administer the affairs of the association (R. 16, 21).

5. On April 18, 1933, counsel for the building and loan association filed a suggestion (R. 15) that, because the Secretary of Banking of the Commonwealth of Pennsylvania had taken possession of the business and property of the association, that officer be substituted as defendant in the case. On the same day (R. 2), the Secretary of Banking filed his answer to the bill (R. 16).

6. On July 12, 1933, Judge Dickinson of the District Court, heard argument on bill and answer (R. 2) and on July 18, 1933, filed his opinion denying plaintiffs' motion for the appointment of receivers with leave to the plaintiffs to renew it at any time (R. 23, 24).

7. The plaintiffs renewed their motion and on August 2, 1933 (R. 2), Judge Dickinson entered a decree appointing Joseph Ominsky and Robert B. Ely, 3rd, as permanent receivers of the association (R. 28).

8. On appeal to the Circuit Court of Appeals for the Third Circuit, argument was heard on October 13, 1933, and on July 25, 1934, that court affirmed the decree of the District Court entered August 2, 1933.

(e) Rulings of the Court Below.

The Circuit Court of Appeals for the Third Circuit in affirming the decree of the District Court appoint-

ing permanent receivers of the association, ruled that the District Court had jurisdiction to appoint receivers of a state building and loan association and that it had not abused its discretion in making the appointment.

In its opinion filed July 25, 1934 (R. 42) the Circuit Court referred to its opinion filed in the matter of COMMONWEALTH OF PENNSYLVANIA *v.* JOHN G. WILLIAMS, et al., Receivers of MORTGAGE BUILDING AND LOAN ASSOCIATION. (See transcript of record in connection with petition for writ of certiorari and brief in support thereof, filed by the Commonwealth with this Court simultaneously with this petition, in the MORTGAGE BUILDING AND LOAN ASSOCIATION CASE).

B. REASONS FOR GRANTING THE PETITION.

1. The decision of the Circuit Court of Appeals for the Third Circuit is in direct conflict with the decisions of the courts of other circuits, which this court has refused to review. It has not differentiated between receivership proceedings for ordinary business or commercial corporations and for quasi-public corporations: AMOS *v.* TRUST CO. OF FLORIDA, 54 F. (2d) 286 (1931), C. C. A. Fifth Circuit. Certiorari refused. 285 U. S. 559. MITCHELL *v.* LAY, 48 F.(2d) 79 (1930), C. C. A. Ninth Circuit. Certiorari refused. 283 U. S. 864.

2. The Circuit Court has upheld the District Court in making available to the shareholder of a state

quasi-public corporation the remedy of receivership as a weapon of coercion and a means for the frustration of the public policy of the State: SHAPIRO *v.* WILGUS, 287 U. S. 348 (1932).

3. From the time the Commonwealth of Pennsylvania first established its system for the regulation, supervision and liquidation by the Department of Banking of its banks and building and loan associations until the decision of the District Court in the case of COMMONWEALTH OF PENNSYLVANIA *v.* JOHN G. WILLIAMS, et al., RECEIVERS OF MORTGAGE BUILDING AND LOAN ASSOCIATION, it had been generally understood and believed throughout the Commonwealth that quasi-public institutions chartered by the State were not subject to the equity jurisdiction of the Federal courts.

4. The decision of the Circuit Court of Appeals is in conflict with that practice and with the decision of the Supreme Court of Pennsylvania, the court of last resort of that State, in the case of COMMONWEALTH OF PENNSYLVANIA, ex rel. WILLIAM A. SCHNADER, ATTORNEY GENERAL, *v.* PENN GENERAL CASUALTY COMPANY by opinion filed on June 30, 1934, and antedating the opinion of the Circuit Court in this case. (A copy of the opinion of the Supreme Court of Pennsylvania in that case, written by Mr. Justice Schaffer, is attached as Appendix "A" to the petition for certiorari and brief in support thereof filed with this Court simultaneously with this petition by the Commonwealth of Pennsylvania in the MORTGAGE BUILDING AND LOAN ASSOCIATION CASE).

5. In deciding the PENN GENERAL CASE, the Supreme Court of Pennsylvania reached the conclusion that a Federal court is without jurisdiction in cases involving the liquidation of quasi-public corporations of a state; and that any effort of a Federal court to exercise such jurisdiction would create rather than settle controversies and would strike at the public policy of the state which has created a complete system for the liquidation of such corporations, jurisdiction over which is limited by state law to the courts and the administrative officers of the state.

6. The assumption of jurisdiction by the District Court, and the appointment of receivers after the Secretary of Banking had taken possession of the assets of the association, and the order of the Circuit Court of Appeals upholding such action, create in the Commonwealth of Pennsylvania an impossible situation involving the very existence of its entire system of regulation, supervision and liquidation of quasi-public corporations.

7. The courts below have decided an important question of general law in a way that is untenable. The decision of the Supreme Court of Pennsylvania supporting the heretofore well-recognized practice of non-interference by the Federal courts with the State's complete control over its quasi-public corporations, brings to a head the issue now before this court.

8. The proper determination of the question here presented is of paramount public importance. It is

imperative that this court finally settle a conflict existing between the jurisdiction asserted by the Federal courts and that given by state law exclusively to administrative officers and courts of the state. This settlement is necessary in order that there may be effective and unhampered administration of the banking, building and loan association and insurance laws not only of the Commonwealth of Pennsylvania, but of all other states which have set up systems for the governance of corporations subject to similar laws. The Circuit Court of Appeals has so far sanctioned a departure by the District Court from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

C. PRAYER FOR WRIT OF CERTIORARI.

Wherefore, your petitioner respectfully prays:

(a) That a writ of certiorari be issued out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding that court to certify and to send to this Court on a day certain to be thereafter designated, a full, true and complete transcript of the record and of all the proceedings in said Circuit Court of Appeals in the cause therein entitled "WILLIAM D. GORDON, Secretary of Banking of the Commonwealth of Pennsylvania, Statutory Receiver of the CHRISTIAN A. FISHER BUILDING & LOAN ASSOCIATION, Intervening-Appellant, *v.* JOSEPH OMINSKY and ROBERT B. ELY, Federal Re-

ceivers of CHRISTIAN A. FISHER BUILDING AND LOAN ASSOCIATION and HARVEY STEIGNER and IDA V. STEIGNER, His Wife, EDITH B. GOODE, JULES SKLAR and PHILIP ZINMAN, Appellees," to the end that the said cause may be reviewed and determined by this Court as provided in Section 6 of the Act of Congress entitled "An act to establish a Circuit Court of Appeals and to define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes," approved March 3, 1891, c. 517 (26 Stat. 826-828), amended by the Act of February 13, 1925, c. 229 (43 Stat. 938, 28 USCA 347).

(b) That such remedy in the premises be decreed as to this Court may seem appropriate and in conformity with said act; that the decree of the United States Circuit Court of Appeals for the Third Circuit in said cause, and of the District Court of the United States for the Eastern District of Pennsylvania, and each and every part thereof may be reversed by this Court, and said courts below directed to dismiss the bill of complaint and to discharge the receivers appointed by the court.

(c) That this Court may make such further order and direction in the premises as may be in accordance with the law to be applied to the facts in this case.

And your petitioner will ever pray, etc.

WILLIAM D. GORDON,

Secretary of Banking of the Commonwealth of Pennsylvania, Statutory Receiver of Christian A. Fisher Building and Loan Association.

WM. A. SCHNADER,
Attorney General

HAROLD D. SAYLOR,
Deputy Attorney General

LEO WEINROTT,
Special Deputy Attorney General

Counsel for the Secretary of Banking, Petitioner.

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF DAUPHIN } ss:

William D. Gordon, being first duly sworn, says that he is the Secretary of Banking of the Commonwealth of Pennsylvania, that he has read the foregoing petition and knows the contents thereof, and that the facts stated therein of his own knowledge are true, and the facts stated on information received from others are averred on information received from

reliable sources and he verily believes them to be true; and that as Secretary of Banking he is duly authorized to file this petition and apply for a writ of certiorari as therein prayed for.

Sworn to and subscribed
before me this 19th
day of September, 1934.

WILLIAM D. GORDON

ERNESTINE G. LEWIS,
Notary Public.

My commission expires
August 17, 1936.

[SEAL]

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I. The Opinions of the Courts Below.

The opinion of the District Court for the Eastern District of Pennsylvania, filed July 18, 1933, denying the motion for the appointment of a receiver (R. 23) and the opinion of the District Court filed July 24, 1933, authorizing submission of a decree appointing receivers (R. 25), are not reported.

The opinion of the Circuit Court of Appeals for the Third Circuit, filed July 25, 1934, affirming the decree of the District Court (R. 42), is not reported.

II. The Jurisdiction.

(a) The jurisdiction of this Court is invoked under Section 240 of the Judicial Code, as amended by the Act of February 13, 1925, c. 229 (43 Stat. 936, 28 USCA Sec. 347), on the ground that the Circuit Court of Appeals has decided an important question of general law in conflict with the decision of the highest court of the Commonwealth of Pennsylvania and has so far sanctioned departure by the District Court from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

(b) The decree to be reviewed is the decree of the United States Circuit Court of Appeals for the Third Circuit entered July 25, 1934 (R. 43), affirming the

order of the District Court for the Eastern District of the United States entered August 2, 1933 (R. 28).

(c) The Secretary of Banking in his answer to the bill of complaint averred that he had taken possession of the business and property of the association pursuant to Pennsylvania law and that such action fully protected the interests of all parties, whether stockholders or creditors of the association. The Secretary of Banking further averred that as receiver of the association his action in administering its affairs was subject to the approval of the Court of Common Pleas of Philadelphia County, and prayed for a dismissal of the bill (R. 21, 22).

(d) The Secretary of Banking appealed to the Circuit Court of Appeals for the Third Circuit, charging error by the District Court in entering its decree of August 2, 1933, appointing receivers and in not dismissing the bill of complaint. The Circuit Court of Appeals denied the claim of the Secretary of Banking for the general reason that the bill of complaint seeking appointment of a receiver to liquidate the association had been filed with the District Court before the Secretary of Banking attempted to take possession of the association and before he filed a certified copy of the certificate with the Court of Common Pleas of Philadelphia County, Pennsylvania.

(e) This case presents a substantial question arising under the laws of Pennsylvania and involving the conflict between the decision of the highest court of that State and that of the Circuit Court of Appeals

for the Third Circuit. It involves not only the continuance of the system created by a sovereign state for the regulation, supervision and liquidation of its quasi-public corporations, by its administrative officers and its courts, but also the existence of the corporations themselves.

III. Statement of the Case.

A full statement of the case has been given in the petition under the heading, "Summary Statement of the Matter Involved" and in the interest of brevity it is not repeated here.

IV. Specification of Errors.

A specification of the errors intended to be urged has been given in the petition under the heading, "Summary Statement of the Matter Involved" and in the interest of brevity it is not repeated here.

V. ARGUMENT.

(a) The Facts.

Christian A. Fisher Building and Loan Association was chartered on June 18, 1919, by the Governor of Pennsylvania and transacted business under the supervision of the Department of Banking of the Commonwealth (R. 5, 21).

On March 31, 1933, five shareholders of the association filed a bill in equity, asking for the appointment of receivers to liquidate it on the ground of insolvency (R. 1, 4). On April 8, 1933, prior to a hearing on the bill, the Secretary of Banking, pursuant to Pennsylvania law and with the consent of the Attorney General, took possession of the business and property of the association and qualified as receiver thereof (R. 16, 21).

Following argument for the Secretary of Banking, who had filed an answer to the bill of complaint, the District Court on July 18, 1933, filed its opinion denying "for the present" the plaintiffs' motion for the appointment of a receiver (R. 23, 24).

On August 2, 1933, despite the fact that the court well knew that since April 8, 1933, the Secretary of Banking had been functioning as receiver of the association and was liquidating its assets, the court appointed Joseph Ominsky and Robert B. Ely, 3rd, receivers of the association (R. 28).

The Commonwealth appealed to the Circuit Court of Appeals for the Third Circuit, which heard argument on October 13, 1933, and on July 25, 1934, sustained the action of the District Court (R. 41, 43). In doing so it did not recognize any distinction in receivership applications for ordinary commercial corporations and those of a quasi-public character, such as banks, trust companies and building and loan associations.

(b) The Secretary of Banking Was Exercising Full Jurisdiction Over Liquidation of the Association Under Pennsylvania Law.

The Pennsylvania Banking Act approved June 15, 1923, P. L. 809 (7 PS Secs. 4, 21, 22, 29), prescribing the powers and duties of the Department of Banking, provided that its supervision, duties and powers should extend and apply to all banks and trust companies, private or unincorporated banks, and building and loan associations.

Pursuant to these provisions of law the Secretary of Banking had taken possession of and was liquidating the affairs of the association when the Federal court sought to interfere by appointing its receivers to supplant the Secretary.

Nowhere in the bill of complaint or in any of the proceedings was it charged that the Secretary of Banking was guilty of neglect or delay in performing his duty. Liquidation was proceeding at a minimum of expense and without wastage of assets.

Whatever the need for action may have been prior to the time the Secretary of Banking took possession, we cannot conceive of any proper reason for the Federal judge appointing receivers in view of the circumstances of the case.

Reference to Pennsylvania law giving the Secretary of Banking exclusive right to liquidate building and loan associations is made at pages 20 to 22 in the brief filed simultaneously herewith in support of the Commonwealth of Pennsylvania's petition for writ of certiorari in the MORTGAGE BUILDING AND LOAN ASSOCIATION CASE.

(c) The District Court Did Not Have Jurisdiction to Appoint Receivers to Liquidate the Association.

Not only is a district court without jurisdiction to appoint receivers to liquidate a quasi-public corporation of a state, but in this case its appointment of receivers was made after the Secretary of Banking as the statutory receiver had actually taken possession of the association's assets.

Reference is made to pages 23 to 26 of the argument on jurisdiction in the brief supporting the Commonwealth's petition for writ of certiorari in the MORTGAGE BUILDING AND LOAN ASSOCIATION CASE.

(d) A Federal Court Should Not Exercise Jurisdiction to Liquidate State Quasi-public Institutions.

Even if the District Court had had jurisdiction to

appoint receivers in this case, it was unquestionably an abuse of discretion to do so under the circumstances.

It was not mandatory on the District Court to appoint receivers and there was absolutely no reason or excuse for making the appointment, in view of the fact that the Secretary of Banking had for months been in possession of the association and was doing more than a Federal receiver could do under Federal law and was acting according to Pennsylvania law as no Federal receiver could act.

Reference is made to the discussion of decisions of the Circuit Courts of Appeals and of the Supreme Court of Pennsylvania in cases involving quasi-public institutions set forth on pages 26 to 33 in the brief filed in support of the Commonwealth's petition for writ of certiorari in the MORTGAGE BUILDING AND LOAN ASSOCIATION CASE.

VI. CONCLUSION.

It is of the gravest consequence if a Federal court is to be permitted to appoint receivers to take over the affairs of a quasi-public corporation which the law of the state giving it existence contemplates shall be supervised, regulated and liquidated only by the statutory officer designated for that purpose. Avoiding the only issue in the case, the District Court and the court below have confirmed the appointment of receivers for Christian A. Fisher Building and Loan Association and have thereby sought to oust the con-

trol of the Secretary of Banking actually in possession as receiver of this institution, on the mere pretext that a bill of complaint was filed before the State officer attempted to take possession.

As stated in the brief of the Commonwealth of Pennsylvania filed with this Court simultaneously herewith in support of the petition for a writ of certiorari in the MORTGAGE BUILDING AND LOAN ASSOCIATION CASE, it is vital that this Court determine this question of paramount public importance:

Shall state systems for the governance of their banks, trust companies, building and loan associations and insurance companies be preserved inviolate and be secured against unrestricted and unregulated attack by receivership practitioners?

The questions which this application suggests should be definitely settled by this Court. We respectfully submit that the petition for certiorari should be granted.

WM. A. SCHNADER,
Attorney General.

HAROLD D. SAYLOR,
Deputy Attorney General.

LEO WEINROTT,
Special Deputy Attorney General.
Counsel for Petitioner.

PETITIONER'S BRIEF

FILE COPY

DEC 15 1934

CHARLES ELMORE CROPLEY
CLERK

IN THE

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OCTOBER TERM, 1934. No. 395

WILLIAM D. GORDON, SECRETARY OF BANKING OF PENNSYLVANIA, ETC.,

Petitioner,

v.

JOSEPH OMINSKY AND ROBERT B. ELY, 3RD, FEDERAL RECEIVERS OF CHRISTIAN A. FISHER BUILDING AND LOAN ASSOCIATION, ET AL.

BRIEF FOR PETITIONER

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit

WM. A. SCHNADER,
Attorney General.

HAROLD D. SAYLOR,
Deputy Attorney General,

Attorneys for Petitioner.

State Capitol,
Harrisburg, Pa.

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BRIEF FOR PETITIONER

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit

This case comes before the Court on writ of certiorari issued to review a final decree of the Circuit Court of Appeals for the Third Circuit.

OPINIONS BELOW

The opinions of the District Court for the Eastern District of Pennsylvania, delivered by Judge Dickinson on July 18, 1934, and on July 24, 1933, are not reported.

The opinion of the Circuit Court of Appeals for the Third Circuit, delivered by Judge Davis on July 25, 1934, is reported in 72 F. (2d) 517.

STATUTES INVOLVED

The Federal statute involved in this proceeding and referred to in the courts below is set forth in Section 24 of the Judicial Code, as amended by the Act of March 3, 1911, c. 231, 36 Stat. 1091, 28 USCA Sec. 41 (1), and is as follows:

> "The district courts shall have original jurisdiction as follows:
>
> "First. Of all suits of a civil nature at common law or in equity * * * where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000, and * * * is between citizens of different states."

The Pennsylvania statute involved in this proceeding is "The Banking Act 1923," of June 15, 1923, P. L. 809, as amended by the Act of May 5, 1927, P. L. 762, 7 PS Sec. 1 et seq.

The relevant portions of the act are recited in full in the appendix to the brief for the petitioner filed with this Court in COMMONWEALTH OF PENNSYLVANIA, Petitioner, v. JOHN G. WILLIAMS, et al., Receivers of MORTGAGE BUILDING AND LOAN ASSOCIATION, October Term 1934, No. 394.

JURISDICTION

The rules of this Court have been complied with.

A statement as to jurisdiction is a part of the brief in support of the petition for certiorari, which was printed and filed with this Court.

STATEMENT OF THE CASE

This is an appeal from the order of the Circuit Court of Appeals for the Third Circuit affirming a decree of the District Court for the Eastern District of Pennsylvania.

The district court appointed Joseph Ominsky and Robert B. Ely, 3rd, receivers to take possession of and liquidate Christian A. Fisher Building and Loan Association and restrained all others from taking possession of or intermeddling with any of the property of the association without leave of the court (R. 18).

On appeal by William D. Gordon, Secretary of Banking, and as such, statutory receiver of the association, to the Circuit Court of Appeals that court on July 25, 1934, affirmed the decree of the district court.

The appellant filed his petition for a writ of certiorari on September 21, 1934. Appellees filed an answer opposing the allowance of the writ. The writ was granted on November 5, 1934 (R. 29).

Christian A. Fisher Building and Loan Association was chartered by the Governor of Pennsylvania on June 18, 1919 (R. 3). Its assets aggregated one million dollars ($1,000,000).

All Pennsylvania building and loan associations transact business under the supervision of the State Department of Banking.

On March 31, 1933, five shareholders of the association residing in New Jersey filed their bill in equity in the court below as of March Term, 1933, No. 7619, asking for the appointment of a receiver (R. 2). On that day the court fixed April 21, 1933, as the date for a hearing and ordered that copies of the bill be served upon defendant association on or before April 5, 1933 (R. 9).

On April 8, 1933, at a formal hearing before the Attorney General, held pursuant to law, the defendant association was found to be insolvent and in an unsafe and unsound condition. Thereupon, with the approval of the Attorney General, the Secretary of Banking filed a certificate in his office at Harrisburg taking possession of the business and property of the association, and forthwith filed a certified copy thereof in Court of Common Pleas No. 4 of Philadelphia County, as of March Term, 1933, No. 4445 (R. 11, 13).

By this procedure the Secretary of Banking took formal legal possession of the association, as authorized by the Pennsylvania statutes. Immediately thereafter he took actual possession of the association's books and assets for the purpose of liquidating the association's affairs (R. 13, 14).

On April 8, 1933, the Secretary of Banking appointed Robert B. Ely, 3rd, as his deputy to administer the affairs of the association in liquidation (R. 11).

On April 18, 1933, counsel for the building and loan association filed a suggestion (R. 10) that because the

Secretary of Banking of the Commonwealth of Pennsylvania had taken possession of the business and property of the association, that officer be substituted as defendant in the case. On April 16, 1933, the Secretary of Banking filed his answer to the bill (R. 10).

On July 12, 1933 (R. 1) the case was argued on bill and answer.

On July 18, 1933, Judge Dickinson of the district court filed an opinion denying plaintiffs' motion for appointment of receivers, with leave to the plaintiffs to renew it at any time (R. 15).

The plaintiffs renewed their motion and on July 24, 1933, Judge Dickinson filed a second opinion concluding that he would appoint receivers (R. 16). On August 2, 1933, Judge Dickinson entered a decree appointing Joseph Ominsky and Robert B. Ely, 3rd, as permanent receivers of the association (R. 18).

From this decree the Secretary of Banking appealed to the Circuit Court of Appeals for the Third Circuit, which heard argument on October 13, 1933. On July 25, 1934, the Court through Judge Davis filed its opinion and decree affirming the district court (R. 27, 28).

SPECIFICATION OF ERRORS

1. The Circuit Court of Appeals for the Third Circuit erred in that it affirmed the decree of the District Court for the Eastern District of Pennsylvania, ap-

pointing receivers in the matter of "HARVEY STEIGNER AND IDA V. STEIGNER, HIS WIFE, EDITH B. GOODE, JULES SKLAR, PHILIP ZINMAN, V. CHRISTIAN A. FISHER BUILDING AND LOAN ASSOCIATION, No. 7619, March Term 1933."

2. The Circuit Court of Appeals for the Third Circuit erred in entering the following order on July 25, 1934:

> "This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of Pennsylvania, and was argued by counsel.
>
> "On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of August 2, 1933, of the said District Court in this cause be, and the same is hereby affirmed, with costs." (R. 28).

QUESTIONS PRESENTED

I

Has a Federal court jurisdiction on a shareholder's bill to appoint receivers to liquidate a quasi-public corporation,—a building and loan association,—when the State law provides a complete system for the organization, regulation, supervision and liquidation of such corporations, and does not permit a shareholder to maintain a suit in the State courts for the appointment of any person as receiver to liquidate their af-

fairs, other than the State administrative official who supervises and regulates such corporations?

II

If a Federal court has such jurisdiction, was the appointment of permanent receivers nearly four months after the State administrative official had taken possession of the business and property of the association, an abuse of discretion?

ARGUMENT

Summary

A member or shareholder of a quasi-public corporation,—a bank, an insurance company, or a building and loan association,—is bound by the provisions of the State law governing the organization, regulation, supervision and liquidation of such corporation.

If the State law provides for liquidation exclusively through the State supervisory official, the member or shareholder must be regarded in law as having accepted that provision as a part of his contract.

Under such circumstances the member or stockholder has no standing to maintain a bill in equity in a Federal court praying the appointment of receivers to liquidate the corporation. He cannot have a controversy with the corporation on this subject; and even though he be a citizen of another state, there is no controversy between citizens of different states.

Diversity of citizenship is not of itself a controversy; and unless there is a controversy, diversity of citizenship does not confer jurisdiction on the Federal courts.

But even if jurisdiction exists, the court should have refused the appointment of receivers in this case because

1. The Secretary of Banking had nearly for four months been in possession of the business and property of the association and had been liquidating its affairs pursuant to State law when the district court appointed its receivers.

2. There was no charge of fraud, mismanagement or improper conduct of any kind on the part of the Secretary of Banking in supervising this association; and

3. The Federal courts, as a matter of comity, should not lend themselves to the subversion of a State's policy in the management and liquidation of quasi-public corporations upon the mere assertion of diversity of citizenship and the necessity for liquidation.

The Federal courts should sustain a State's policy in assuring stockholders of its quasi-public corporations, that liquidation, if it becomes necessary, will be in charge of the State's administrative officer charged with the duty of supervising, regulating and liquidating such corporations. They should not interfere with

such officer when he is actually engaged in such liquidation.

Reference is made to the argument and the discussion of decisions of the Circuit Courts of Appeals in cases involving quasi-public institutions, set forth on pages 10 to 59 of the brief filed for the petitioner with this Court in COMMONWEALTH OF PENNSYLVANIA, Petitioner, v. JOHN G. WILLIAMS, et al., Receivers of MORTGAGE BUILDING AND LOAN ASSOCIATION, October Term 1934, No. 394.

CONCLUSION

This case, COMMONWEALTH OF PENNSYLVANIA v. JOHN G. WILLIAMS, et al., October Term 1934, No. 394, GORDON, SECRETARY OF BANKING v. WASHINGTON, et al., and GORDON, SECRETARY OF BANKING v. O'BRIEN, et al., are the only decisions of United States Circuit Courts of Appeal refusing to give effect to State laws governing the method of liquidating quasi-public corporations. All of these cases were decided at about the same time. In the two last mentioned, petitions for certiorari to this Court are pending. They involve the appointment of receivers to take out of the hands of the Secretary of Banking assets of a closed bank.

These decisions reflect a complete change in the attitude of the Circuit Court of Appeals for the Third Circuit on this important subject. In the earlier cases, LYON v. MCKEEFREY, 171 Fed. 384 (1909), and O'NEIL v. WELCH, 245 Fed. 261 (1917), this same court gave

strong expression to its belief that Federal courts should support state systems for the organization, regulation, supervision and liquidation of quasi-public corporations. The former case dealt with a bank; the latter with an insurance company.

Further, we refer to the summary of cases listed in the conclusion to the brief filed in support of the petitioner in COMMONWEALTH OF PENNSYLVANIA v. JOHN G. WILLIAMS, et al., October Term 1934, No. 394.

On principle, we submit that the decree of the Circuit Court of Appeals should be reversed.

The complainants in the district court are stockholders of the building and loan association. They are bound by the laws of Pennsylvania establishing the State's system for the supervision, regulation and liquidation of such associations. They could not have a justiciable controversy with the association regarding its liquidation.

But if such a controversy could exist and diversity of citizenship gave the district court jurisdiction, that court abused its discretion in appointing permanent receivers to liquidate the association when the State Secretary of Banking had actually taken possession of the business and property of the association and was liquidating its affairs. The Federal courts should not in such cases lend their aid to efforts to frustrate the State's settled policy in regulating and liquidating quasi-public corporations.

The district court should not have appointed receivers and attempted to take over the assets of the association from the Secretary of Banking, who, as the State administrative official, was in possession of such assets and was liquidating them. Comity between the Federal and State governments on matters within the proper cognizance of their respective authorities, demanded that the district court should have taken no action at all after the Secretary of Banking had acted.

For these reasons, we believe that the decree of the court below should be reversed.

Respectfully submitted,

WM. A. SCHNADER,
Attorney General.

HAROLD D. SAYLOR,
Deputy Attorney General.

Attorneys for Petitioner.